

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Statutory Review of the System for
Regulating Rates and Classes for
Market-Dominant Products

Docket No. RM2017-3

**REPLY OF THE ASSOCIATION FOR POSTAL COMMERCE,
ALLIANCE OF NONPROFIT MAILERS, AMERICAN CATALOG MAILERS
ASSOCIATION, INC., DATA & MARKETING ASSOCIATION,
ENVELOPE MANUFACTURERS OF AMERICA, GREETING CARD ASSOCIATION,
IDEALLIANCE, MAJOR MAILERS ASSOCIATION, MPA—ASSOCIATION OF
MAGAZINE MEDIA, NATIONAL ASSOCIATION OF PRESORT MAILERS,
NATIONAL POSTAL POLICY COUNCIL, NEWSPAPER ASSOCIATION OF
AMERICA, PARCEL SHIPPERS ASSOCIATION, AND SATURATION MAILERS
COALITION TO OPPOSITION OF THE UNITED STATES POSTAL SERVICE
TO MOTIONS TO MODIFY THE PROCEDURAL SCHEDULE**

(January 26, 2017)

On January 24, 2017, the United States Postal Service filed an opposition to two motions to modify the procedural schedule in this docket.¹ The undersigned parties, all signatories to one or the other of these motions,² hereby submit this reply to the USPS Opposition to clarify their concerns regarding the existing procedural framework.³

¹ Opposition of the United States Postal Service to Motions to Modify the Procedural Schedule (Jan. 24, 2017) (“USPS Opposition”).

² Motion of Alliance of Nonprofit Mailers and MPA-The Association of Magazine Media to Modify Procedural Schedule (filed January 17, 2017); Joint Motion for Modification of Procedural Framework (January 18, 2017).

³ The undersigned parties respectfully request that the Commission accept this reply pursuant to Rule 3001.21(b). The importance of this threshold procedural issue, and the threat to this proceeding that would be created by adhering to a procedural schedule that could prejudice the outcome of the case, warrant a full record on this issue now.

Contrary to the suggestion of the USPS Opposition,⁴ the mailers do not contest the Commission's authority to issue an Advanced Notice of Proposed Rulemaking or the Commission's authority to solicit comments from the public on any or all aspects of the current ratemaking system or proposed alternatives. Further, the mailers recognize that all parties will have an opportunity to further comment before the Commission enacts any revisions to the current system of ratemaking. Nevertheless, we believe that the procedure outlined in the ANOPR is ill-suited to the task at hand and will potentially place certain interested parties at a disadvantage if the Commission ultimately determines revisions to the current system of ratemaking are necessary.

The issue is a practical one, not a legal one. An Advanced Notice of Proposed Rulemaking suggests that a Notice of Proposed Rulemaking may follow. In the context of the 10-year review, however, the only reason to issue a Proposed Rule is if the Commission has determined the current system is not meeting the statutory objectives and revisions to the system are required. A proposed rule, therefore, will likely provide a proposed alternative system of regulating market dominant rates. Presumably, this proposed alternative will be based on comments received in response to the ANOPR. And therein lies the problem.

Those who believe the current system is functioning well are unlikely to argue forcefully for an alternative system in response to the ANOPR. Consequently, without an opportunity for reply comments in this phase of the proceeding, any proposed rule the Commission issues is likely to be based primarily on the suggestions of those who are dissatisfied with the current system. If so, the proposed rule is less likely to reflect an appropriate balance between the interests of the parties. Instead, it will reflect the interests and thinking of those who are opposed

⁴ USPS Opposition at 1-3.

to the current system. While all parties will have the opportunity to comment on any proposal, the Commission's thinking may have already begun to harden at this point, and those with a preference for a system of regulation significantly different from the one embodied in the proposed rule will have a difficult case to make. To the extent the Commission determines that changes to the system are necessary, it will be more likely to craft a workable proposal reflecting a broad range of interests if it first announces its intention to change the system—perhaps through a separate ANOPR—and then specifically solicits feedback from all parties on how best to do so.

The Postal Service attempts to minimize such concerns, contending that an unlimited proceeding with no reply comments is sufficient because the positions of the parties in this proceeding “are predictable.” USPS Opposition at 6. This misses the point. To be sure, it is at least predictable that the Postal Service will argue that the current system is not providing it with sufficient revenue. How the Postal Service would propose to remedy that situation while still meeting PAEA's objectives of maximizing incentives to reduce costs and increase efficiency, creating predictability and stability in rates, and reducing the administrative burden of the ratemaking process is, by contrast, anyone's guess. The parties to this proceeding should not be expected to speculate about what particular remedies adverse parties might suggest, especially before the Commission has identified any aspect of the current system it believes is not working properly.

Accordingly, the undersigned parties submit that orderly and equitable resolution of this proceeding can only be achieved by modifying the procedural framework as suggested in the motions.

Respectfully submitted,

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